

ORIGIN (POSTAL USE ONLY)

INTERNATIONAL SHIPMENTS ONLY

☐ Business Papers

☐ Merchandise

Customs forms and commercial invoice may be required. See Pub 273 and International Mail Manual

P.O. ZIP

11111

Day of Delivery

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☐ Flat Rate Envelope

Postage

\$ 24.20

Return Receipt

C.O.D.

Total Postage & Fees

\$ 24.20

Date in

Mo. Day Yr.

10/17/02

☐ 12 Noon ☐ 3 PM

Military

☐ 2nd Day ☐ 3rd Day

Int'l Alpha Country Code

Weight

3.8 lb. 8 oz.

No Delivery

Acceptance

Signature

SUN VALLEY PO
SUN VALLEY, California
913529998

10/17/2002 (800)275-8777 04:24:32 PM

Product Description	Sale Qty	Unit Price	Final Price
WASHINGTON DC 20530			\$24.20

Express Mail PO-ADD
Serial Number EH003949219US Charles A James
Next Day Noon / Normal Delivery

Issue PVI: \$24.20

WASHINGTON DC 20530 \$24.20
Express Mail PO-ADD
Serial Number EH003949222US
Next Day Noon / Normal Delivery

Issue PVI: \$24.20

WASHINGTON DC 20530 \$24.20
Express Mail PO-ADD
Serial Number EH003949240US
Next Day Noon / Normal Delivery

Issue PVI: \$24.20

Total: \$72.60

Paid by: Personal Check \$72.60

91352-2221

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FROM: (PLEASE PRINT) PHONE (918) 352-2069
THE LAW OFFICE OF JAMES J. CIANCY
9055 LA TUNA CANYON ROAD
LA TUNA CANYON, CALIFORNIA
91352-2221

10/17/02 at 4:24 PM
EH003949222US

SEE REVERSE SIDE FOR THE
SERVICE GUARANTEE AND LIMITS
ON THE INSURANCE COVERAGE

EXHIBIT 1

☐ WAIVER OF SIGNATURE (Domestic Only) I wish delivery to be made without obtaining the signature of the addressee or the addressee's agent (if in the judgement of the delivery employee, the article can be left in a secure location) and I authorize the delivery employee to sign that the shipment was delivered and understand that the signature of the delivery employee will constitute valid proof of delivery.

NO DELIVERY

☐ WEEKEND ☐ HOLIDAY

Customer Signature

TO: (PLEASE PRINT) PHONE
10/17/02 by 12:00 on 10/18/02
ANDREW BEACH, SCHEDULED TO
U.S. ATTORNEY GENERAL
950 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20530

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Return Receipt

C.O.D.

Total Postage & Fees

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10/17/02 at 4:24 PM
EH003949240US

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TO: (PLEASE PRINT) PHONE
10/17/02 by 12:00 on 10/18/02
THE HONORABLE JOHN ASHCROFT
U.S. ATTORNEY GENERAL
950 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20530

CUSTOMER USE ONLY

METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or

Postal Service Acct. No.

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☐ WEEKEND ☐ HOLIDAY

Customer Signature

TO: (PLEASE PRINT) PHONE
10/17/02 by 12:00 on 10/18/02
CHARLES A. JAMES
U.S. ASSISTANT ATTORNEY GENERAL
601 10th STREET, N.W., SUITE 10011
WASHINGTON, D.C. 20530

The Law Office Of James J. Clancy
9055 La Tuna Canyon Road
La Tuna Canyon, California 91352

(818) 352-2069
FAX (818) 352-6549

October 17, 2002

The Hon. John Ashcroft
U.S. Attorney General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Express Mail No. EH003949240US

- RE:**
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(A) that U.S. Attorney General John Ashcroft acknowledge service by mail of the

enclosed Complaint and **Summons** in the civil lawsuit entitled **James J. Clancy, acting as a Private Attorney General v. American Telephone and Telegraph Corporation (A.T.&T.), a New York Corporation, etc., and John Ashcroft, as the U.S. Attorney General, et al.**, No. LC062475, in the Superior Court of the State of **California**, **For the County of Los Angeles**, filed October 4, 2002, seeking affirmative relief including a **Declaratory Judgment** and a Judgment on the Pleadings that **A.T.&T.**, a New York Corporation, is and has been broadcasting hardcore pornography which **is unlawful and** contraband under **Federal** and California Law, in violation of the State **and Federal** Laws, over Channel 96 (analogue), and Channels 457 and 459 (digital) for **two years**, from October, 2000, through October, 2002, and

(B) for affirmative relief including the forfeiture of the proceeds of **A.T.&T.'s** unlawful business as contraband, and an accounting and award of such unlawful proceeds to the City Government of the San Fernando Valley in which the Superior Court sits (which will **be** known as the new City of San Fernando Valley if its secession from the City of Los Angeles is authorized on Election Day, November 5, 2002), see **Complaint** at page 27, paragraph 49, and

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Dear Attorney General John Ashcroft,

By correspondence dated February 9, 2001, March 29, 2001, May 20, 2002, and July 16, 2002, and service of the above pleadings in the U S Supreme Court, I informed the Office of the U S Attorney General that I was prosecuting a civil claim, as a Private Attorney General, of the fraudulent business operations involving **A.T.&T.**, a New York Corporation, on the ground that the **State and Federal Obscenity Statutes** had fallen into desuetude. See copy of such correspondence at **Appendix B, C, D, and E, attached** to this letter. Attorney General Ashcroft did not personally respond to my correspondence or pleadings re the charge of "fraud" that I had invoked. Instead, I **received two responses** from his Office, one response from Mary Ellen Warlow, Acting Deputy Assistant Attorney General of the **Criminal Division** of the Department of Justice, dated April 20, 2001, and one response from Chief Assistant Attorney General Andrew G. Oosterbaan, Child Exploitation and Obscenity Section, dated **July 17, 2002, of the Criminal Division** of the Department of Justice. See copies **attached** at **Appendices F and G**.

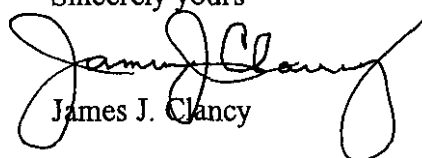
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James J. Clancy

JJC/cjc

Attachments

<u>Appendix A</u>	<i>LA. Daily News</i> article, dated 10/11/02.
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Cc: Chief Justice William Rehnquist, U.S. Supreme Court

App
A

BUSINESS sale

Online: dailynews.com

FCC blocks DirecTV

By Stephen Labaton
The New York Times

EchoStar to contest rare merger objection

WASHINGTON — The Federal Communications Commission blocked the merger of the nation's two largest satellite television broadcasters on Thursday, the first time in 36 years that the agency has challenged a large corporate deal for being anti-competitive and against the public interest.

Executives at the satellite companies, EchoStar Communications and the DirecTV unit of General Motors Hughes Electronics, said that they remained committed to a

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Government officials said the companies now had high hurdles to overcome to engineer a deal that would be financially attractive to them and in the best

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Rupert Murdoch's News Corp., which lost to EchoStar last year in a bidding war for Hughes Electronics and DirecTV, is expected to make another run at DirecTV if the EchoStar deal eventually dies. When EchoStar

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James, however, was described Thursday as being close to approving another huge telecommunications deal, the proposed acquisition by Comcast of AT&T, lawyers involved in that review said.

Officials at the FCC are expected to also approve the cable television transaction soon, having already concluded that it does not pose the same anti-competitive concerns as a DirecTV-EchoStar merger — in large part because AT&T and Comcast serve different geographic markets. EchoStar and DirecTV compete for customers nationwide.

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DIRECT TV UNIT OF GENERAL MOTORS HUGHES ELECTRONICS

ECHO STAR OWNS THE DISH NETWORK

Echo Star Communications Corp.

*News Corp.
Rupert Murdoch*

*202.514.7600
2 to 1*

★

The Law Office of James J. Clancy
9055 La Tuna Canyon Road
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(818) 351-2069
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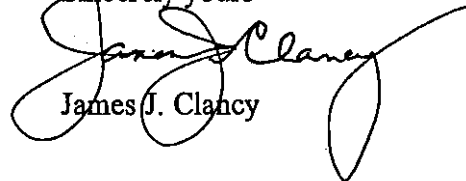
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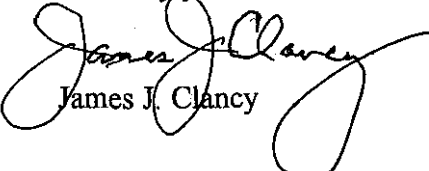
I have reasons to believe that Attorney General Ashcroft may not have seen such

correspondence, and/or that the Criminal Division of the Department of Justice may have acted unilaterally. My letter recommended the use of the civil process (rather than the criminal process) as the means of treating this "vice" crime and "denigrated" the use of the criminal process, because of the First Amendment defense which is customarily employed in criminal cases, which has no application in the civil process except for its use as a general demurrer to the civil complaint

In the interest of "Justice" I, as a Private Attorney General, am attempting herein to negotiate and accomplish service of process by mail on the Civil Branch of the Department of Justice, by requesting the written consent of service on the above-mentioned three Justice Department Officials Attorney General John Ashcroft, as a named defendant in the State action, Scheduler Andrew Beach, and Department of Justice Attorney Charles A. James, as John Doe 1, and John Doe 2, respectively in said Civil Proceedings

If the facts establish that this alleged fraudulent business allegation "Officially" never went beyond the Criminal Division for resolution by the Attorney General of the Civil Division in the civil process, I would ask that Attorney General John Ashcroft now exercise his personal judgment in the civil proceedings before the Civil Division from the autoptical evidence pleaded in this California case (see Complaint at Appendix A-1 through A-8) and, if in agreement with this Private Attorney General, acknowledge that the State of California should recognize the U S. Attorney General John Ashcroft as a Plaintiff in this Civil matter, who stands with this Private Attorney General for the purpose of obtaining the Trial Court's determination of the Summary Judgment Motion on the Pleadings in such California civil proceeding

Sincerely yours



James J. Clancy

JJC/cjc

Attachments

<u>Appendix A:</u>	LA. Daily News article, dated 10/11/02.
<u>Appendix B:</u>	Letter, dated 2/9/01, to the Hon. John Ashcroft from James J. Clancy.
<u>Appendix C:</u>	Letter, dated 3/29/01, to Andrew Beach, Scheduler, from James J. Clancy.
<u>Appendix D:</u>	Letter, dated 5/20/02, to the Hon. John Ashcroft from James J. Clancy.
<u>Appendix E:</u>	Letter, dated 7/16/02, to the Hon. John Ashcroft from James J. Clancy.
<u>Appendix F:</u>	Response, dated 4/20/01, from Mary Ellen Warlow, Acting Deputy Assistant Attorney General, Criminal Division, to James J. Clancy.
<u>Appendix G:</u>	Response, dated July 17, 2002, from Andrew G. Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, to James J. Clancy.

Enclosures

Summons and Complaint in Clancy v. A.T.&T. Corp., et al., supra

Cc: Chief Justice William Rehnquist, U.S. Supreme Court

BUSINESS sale

Online: dailynews.com

FCC blocks DirecTV

By Stephen Labaton
The New York Times

EchoStar to contest rare merger objection

WASHINGTON — The Federal Communications Commission blocked the merger of the nation's two largest satellite television broadcasters on Thursday, the first time in 36 years that the agency has challenged a large corporate deal for being anti-competitive and against the public interest.

Executives at the satellite companies, EchoStar Communications and the DirecTV unit of General Motors' Hughes Electronics, said that they remained committed to a

deal and would soon propose substantial revisions. But in a sign of the statutory skepticism about even a revised deal, the FCC issued its 4-0 ruling after refusing the last-ditch entreaties of the companies to delay the vote until the new proposal was formally made.

Government officials said the companies now had high hurdles to overcome to engineer a deal that would be financially attractive to them and in the best

interests of consumers. Moreover, either company can walk away from the transaction if it is not approved and completed by Jan. 21, a date that is almost certain to arrive before the FCC completes consideration of any revised deal.

Rupert Murdoch's News Corp., which lost to EchoStar last year in a bidding war for Hughes Electronics and DirecTV, is expected to make another run at DirecTV if the EchoStar deal eventually dies. When EchoStar

agreed to acquire Hughes last October, the deal was valued at about \$26 billion, but as the companies' share prices have declined, the value has fallen to about \$18 billion.

Thursday's decision represents a rare instance in which officials appointed by the Bush administration have tried to stop a corporate deal, and an even rarer instance in which a deal was blocked by the FCC. Staff officials at the Justice Department are said to oppose

the original terms of the EchoStar deal as anti-competitive. But Charles A. James, the head of the antitrust division at the Justice Department, has not declared whether the deal can be rescued by a restructuring.

James, however, was described Thursday as being close to approving another huge telecommunications deal, the proposed acquisition by Comcast of AT&T, lawyers involved in that review said.

Officials at the FCC are expected to also approve the cable television transaction soon, having already concluded that it does not pose the same anti-competitive concerns as a DirecTV-EchoStar merger — in large part because AT&T and Comcast serve different geographic markets. EchoStar and DirecTV compete for customers nationwide.

FCC officials said the proposed satellite deal, which would create a company with more than 18 million subscribers, offered no concrete benefits to

DIRECTV UNIT OF GENERAL MOTORS HUGHES ELECTRONICS

ECHOSTAR OWNS THE DISH NETWORK

EchoStar Communications Corp.

*News Corp.
Rupert Murdoch*

*202-514-2600
2401*

★

APP
B

The Law Office Of James J. Clancy
9055 La Tuna Canyon Road
La Tuna Canyon, California 91352

(818) 351-2069
FAX (818) 352-6549

February 9, 2001

The Hon. John Ashcroft
Attorney General of the United States
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Request for a Personal Appointment to Discuss the Use of a "Roving Task Force" to Terminate the Exhibition of Pornographic Videotapes by A.T.&T. "In Demand" Cable T.V., by Using Timed Still Photographs, Lapse-Timed by a Digital Camera, to Construct a **Time and Motion Study** Analysis of 29 Hour-Long Films Exhibited During Eleven Consecutive Daily Surveillances of the A.T.&T. Adult Cable Program, Which Were Broadcast to Sun Valley, California, from 10:00p.m. to 4:00a.m.

Dear Attorney General Ashcroft.

Pursuant to instructions received from your Office, I am writing to request a personal appointment to meet with you in Washington, D.C., to discuss the merits of my "roving" Task Force recommendation to your Office which may also have been made to your Office via John Harmer', a former California Lt. Governor during Gov. Reagan's Administration.

I am **enclosing** the following Exhibits with the following additional comments:

1. ~~Two~~ composite digital prints (one in color and one in black and white), containing 36 1/4 x 2 1/2 "lewd", "pornographic" digital prints of the first 2.4 minutes of the film, "**101 Cheerleaders and One Jock**" (hereinafter "**101 Cheerleaders**"), captured at 4 second intervals and numbered 1-36 on the Wednesday, January 31, 2001 broadcast.

L John Harmer has been in communication with me and has transmitted the same via Senators Hatch and Bennett of the State of Utah. for your consideration. See the **enclosed Confidential correspondence** which is sealed in an envelope and marked "for Attorney General John Ashcroft's eyes only".

2. A 5 page xerox copy of the "lewd, "pornographic" digital prints of the first 12 minutes of the movie "**101 Cheerleaders**" (180 prints x 4 seconds = 720 seconds = 12 minutes). The film content of the remaining 48 minutes of the film is equally as, "lewd" and "pornographic" as the first 12 minutes.
3. Confidential correspondence which is sealed in an envelope and marked "for Attorney General John Ashcroft's eyes only".

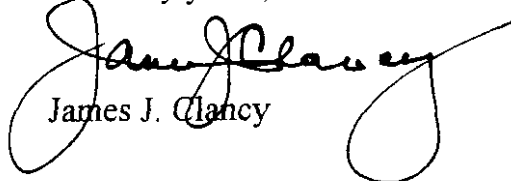
The film content of 28 other hour-long films which were surveilled and recorded on eleven successive days (January 29, 2001 to date) is as "lewd and "pornographic" as the enclosed digital prints for the film "**101 Cheerleaders**".

I am scheduled to meet with Los Angeles County District Attorney Steve Cooley at 2:30p.m. on Monday, February 12, 2001 to discuss the matter of Supervisor Yaroslavsky's Motion to terminate the L.A. County Commission on Obscenity. The public meeting of the Los Angeles County Board of Supervisors which was scheduled for Wednesday, February 14TH, has been changed to Wednesday, February 21ST.

If possible, I would appreciate being informed as to your decision on this request prior to my meeting on February 14TH with District Attorney Cooky.

If my request for a personal appointment is granted, it should, if possible, be scheduled for a date on or before February 19TH, (2 days before the Public Hearing by the L.A. County Board of Supervisors on Supervisor Yaroslavsky's Motion to terminate the L.A. County Commission on Obscenity).

Sincerely yours,



James J. Clancy

JJC/cjc

- Encls.: Exhibit 1: Two composite digital prints of the first 2.4 minutes of the film, "**101 Cheerleaders and One Jock**".
- Exhibit 2: A 5 page xerox copy of the digital prints of the first 12 minutes of the film "**101 Cheerleaders and One Jock**".
- Exhibit 3: Confidential correspondence which is sealed in an envelope and marked "for Attorney General John Ashcroft's eyes only".



THE LIBRARY OF CONGRESS

101 INDEPENDENCE AVENUE, S.E.
WASHINGTON, D.C. 20540-4680

MANUSCRIPT DIVISION

April 18, 2002

Dear Mr. Clancy:

My colleagues and I were pleased to read in your letter of March 27th that you wish to give your papers to the Library of Congress. Your letter and the accompanying material only reached my office on April 17th. Currently all mail to congressional offices, including the Library of Congress, is quarantined to check for bioterrorism hazards and subjected to irradiation and inspection. Due to technical problems, there is a backlog awaiting treatment and delivery of mail is delayed. Consequently, it may be preferable to use e-mail (jhay@loc.gov) or fax (202-707-6336) when contacting the Library. If the nature of the material makes either of those options unworkable, contact me (202-707-1089) about other delivery options.

We would welcome your papers and you may be assured that we will maintain them in a fashion that will ensure that the James J. Clancy papers are organized for research and permanently available as a resource for scholars and researchers. The chief formal action that will need completing is our agreement on an "instrument of gift" to be signed by you and by the Librarian of Congress, Dr. James Billington. From the Library's point of view, the essential language is that conveying physical ownership of papers from you to the United States. We need, by the way, only ownership of the physical property: the Library does not require that literary rights (copyright rights) in your unpublished material also be conveyed. We regard that as an option for you. Many donors convey copyright to the public; researchers find this convenient because they do not have to concern themselves with getting permission for publication of lengthy quotations. Other donors, however, chose to retain copyright rights for themselves or their heirs for the length set by copyright law or for some lesser period.

The remaining issues usually dealt with in ~~an~~ instrument of gift clarify how the Library will administer the papers, and with those issues a number of options exist. If there is a need for some restriction on access, the restriction must be set forth clearly in the instrument. For example, a provision that access is restricted to those who have the donor's written permission for five or ten years or ~~the donor's~~ lifetime is not unusual for someone involved in public life. Or ~~access can be allowed but only if the researcher agrees to ask for~~ permission to publish material from the papers. The key to a good access clause is that its duration must be reasonable, its terms must be clear, and that if any judgment is to be exercised, this judgment is retained by the donor or the donor's literary executor.

Our instruments of gift also contain a clause regarding copying the papers. Most donors allow researchers given access to make single copies for research purposes. In addition, archivists during the organization of papers often find some material not appropriate for permanent historical preservation, usually duplicate copies. The instrument of gift should state **what is to be done with this material**. The three chief options are automatic disposal by the Library, automatic return to the donor, or offering the material back to the donor with the donor deciding at that point if the material is wanted back or should be disposed of by the Library.

The Library has draft language for these various options, and the language can be modified to meet special needs of the donor or particular circumstances of the papers. Earlier I sent a copy of one of those drafts to you. After you have considered **what options** you might want, contact me and I will have a draft instrument of gift prepared embodying your preferences.

Let me also note that you may wish to consult a tax attorney or accountant regarding the tax consequences (charitable deduction) of the gift of your papers to the United States. The matter of the timing of the transfer of ownership and of the form of the transfer (including restrictions) may also affect the tax consequences of a gift.

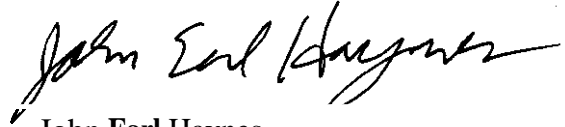
The Library can arrange to pack, pick up papers, and transport them to the Library at no expense to you. I regret to note that the Library does not possess a fund that would allow funding of secretarial help for screening and preparing a comprehensive guide to the papers prior to their reaching our archival staff here.

Once the papers are in our possession, a professional archivist will survey the papers and plan their organization. If the papers come with an inherent order, usually the organizing plan will be based on that order but where necessary an organization system will be created. Generally, papers are broken down into series and sub-series reflecting different aspects of the donor's life or different formats of material. Series are then organized by chronology, subject, or alphabetically depending on the nature of the material. The archivist then proceeds to organize the material, removing duplicates or inappropriate items, photocopying or microfilming material in danger of physical deterioration, and sorting and refiling material into acid-free folders and archival boxes, and labeling folders in accordance with the organizing plan.

Finally, the archivist prepares a register (finding aid) that describes in some detail the contents of each box down to the folder title level. The register also contains a schematic biographical note on the donor to assist researchers as well as a "scope and content" note describing the organizational arrangement of the collection and highlighting its contents. The register is prepared in a paper form for use by researchers in the Manuscript Reading Room: **an electronic version** is placed on Library of Congress's web site. We have found that the web **version** of a register **has been highly effective** in alerting researchers to the availability of a collection and assuring them that a research trip is justified **for** examination of the original material. The URL of the Manuscript Division web page is [<http://lcweb.loc.gov/rm/mss/>](http://lcweb.loc.gov/rm/mss/).

Again, the Library of Congress looks forward to providing an archival home for the James J. Clancy papers and to the valuable documentation your papers will provide on the problem and legal status of pornography.

Sincerely,

A handwritten signature in black ink, reading "John Earl Haynes". The signature is fluid and cursive, with the first name "John" being the most prominent.

John Earl Haynes
20th Century Political Historian

Mr. James Clancy
9055 La Tuna Canyon Road
La Tuna Canyon, CA 91352



THE LIBRARY OF CONGRESS
ANGLO-AMERICAN ACQUISITIONS DIVISION
101 Independence Avenue, S.E.
WASHINGTON, D.C. 20540-4170

May 6, 2002

Dear Mr. Clancy:

On behalf of the Librarian of Congress, I am pleased to accept and to acknowledge your recent gift to the Library of the manuscript material more fully described below:

Clancy, James J.

Papers of James J. Clancy, 1981-2002.

Correspondence, legal documents, and video recordings relating to Clancy's work as a lawyer in anti-pornography litigation. 10 items.

We are grateful to be able to add these items to your papers conserved by the Library's Manuscript Division.

Because my letter is the Library's official acknowledgment of your gift, I also take this opportunity to confirm for you for tax purposes that the Library has not provided you with any goods or services in exchange for this donation. As required by the Omnibus Budget Reconciliation Act of 1993, please retain this letter as documentary evidence of that fact in support of any deduction you may claim for your gift. Thank you for your thoughtfulness and for your support of the Library of Congress. If I can be of any further assistance, please do not hesitate to contact me.

With best wishes,

Sincerely,

Michael W. Albin
Chief

James J. Clancy
9055 La Tuna Canyon Road
La Tuna Canyon, CA 91352



THE LIBRARY OF CONGRESS
ANGLO-AMERICAN ACQUISITIONS DIVISION
101 Independence Avenue, S.E.
WASHINGTON, D.C. 20540-4170

July 8, 2002

Dear Mr. Clancy:

On behalf of the Librarian of Congress, I am pleased to accept **and to** acknowledge your recent gift to the Library of the manuscript material more fully described **below**:

Clancy, James J.

Papers of James J. Clancy, 1998-2000

Six bound volumes containing correspondence, memoranda, and legal documents.

We are grateful to be able to add these items to the James J. Clancy papers conserved by the Library's Manuscript Division.

Because my letter is the Library's official acknowledgment of your gift, I also take this opportunity to confirm for you for tax purposes that the Library has not provided you with any goods or services in exchange for this donation. **As** required by the Omnibus Budget Reconciliation Act of **1993**, please retain this letter as documentary evidence of that fact in support of any deduction you may claim for your gift. Thank you for your thoughtfulness and for your support of the Library of Congress. If I can be of any further assistance, please do not hesitate to contact me.

With best wishes,

Sincerely,


Michael W. Albin
Chief

James J. Clancy
c/o Robin Gallagher
901 Cedar Fork Trail
Chapel Hill, NC 27514

October 23, 2000


Wall Street Meets Pornography

By TIMOTHY EGAN


PROVO, Utah — The video-store chain that Larry W. Peterman owned in this valley of wide streets and ubiquitous churches carried the kind of rentals found anywhere in the country — from Disney classics to films about the sexual adventures of nurses. Mr. Peterman built a thriving business until he was charged last year with selling obscene material and faced the prospect of bankruptcy and jail.

Just before the trial, Mr. Peterman's lawyer, Randy Spencer, came up with an idea while looking out the window of the courtroom at the Provo Marriott. He sent an investigator to the hotel to record all the sex films that a guest could obtain through the hotel's pay-per-view channels. He then obtained records on how much erotic fare people here were buying from their cable and satellite television providers.

As it turned out, people in Utah County, a place that often boasts of being the most conservative area in the nation, were disproportionately large consumers of the very videos that prosecutors had labeled obscene


 Susana Raab for The New York Times
 A selection of pornographic movies available from On Command for viewing in the privacy of their rooms at a hotel in Norfolk, Va. On Command says it reaches 835,000 hotel rooms in the United States and would like to reach a million more.

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OBSCENITY

Trouble in Sodom

LIKE Canute, the Viking king who commanded the waves of the sea to recede, St. Charles County Prosecutor Jack Danas is the latest public official to stand against the tide of pornography. On Thursday, he got washed away. Mr. Danas brought Family Video Inc. to trial on three misdemeanor counts of promoting obscenity, to wit, renting three videos from its O'Fallon store to an anti-porn activist. The titles of the videos: "Anal Heat," "Hotel Sodom" and "Rock Hard."

An all-woman jury — the defense and prosecution agreed to exclude men from the panel — Thursday returned a not guilty verdict on two of the counts. The count on "Hotel Sodom" was dismissed because of a technical flaw in the video. Having heard testimony from a therapist at the Masters and Johnson Clinic in St. Louis that pornographic videos are useful in restoring married couples' sex drive, the jurors decided that "Anal Heat" and "Rock Hard" did not meet the Supreme Court's 1973 test of obscenity.

The high court ruled that states may deem material obscene if, by applying contemporary community standards, the material is judged to appeal to prurient interests; depicts sexual conduct in a patently offensive way; and lacks serious literary, artistic, political or scientific value.

The community standards part of the test was criticized by civil libertarians, and this newspaper, as making it too easy to censor speech. It essentially created a different First Amendment for every community.

According to the St. Charles jurors, it was the

"scientific value" of the videos in marital therapy that convinced them. That's a heck of a stretch. It also shows that the Supreme Court's decisions in this area are a confusing mess.

Pornography sells, there's no doubt about it. But probably not for its therapeutic value. It sells because it makes money for people. Some of America's greatest corporations — AT&T, Time Warner and General Motors among them — are now in the business of selling pornography on cable and satellite systems. According to The New York Times, dirty movies generate \$190 million a year for hotels with in-room movie systems; video stores do \$4.8 billion a year in selling and renting sex films; 21 million Americans a month visit sex sites on the Internet and spend \$1 billion a year on their habit.

Money can't be the only measure of right and wrong, nor any purported therapeutic value it might have to a deflated couple. Pornography degrades women and debases everyone it touches. Its pernicious, widening presence in our culture is reprehensible.

But as much as we may wish that pornographic videos, magazines and Web sites — and those who capitalize on them — would assume a lower profile, that does not give the government a warrant to ban them.

Perhaps a more effective way for a community to shed itself of a business that distributes porn would be to stop patronizing it, or surround it with picketing parents. The paradox of the First Amendment is that it extends the same protection to porn shop picketers as it does to porn.



I KNOW THAT MY RETIREMENT WILL MAKE NO DIFFERENCE IN ITS CARDINAL PRINCIPLES. THAT IT WILL ALWAYS FIGHT FOR PROGRESS AND REFORM. NEVER TOLERATE INJUSTICE OR CORRUPTION. ALWAYS FIGHT DEMAGOGUES OF ALL PARTIES. NEVER BELONG TO ANY PARTY. ALWAYS OPPOSE PRIVILEGED CLASSES AND PUBLIC PLUNDERERS. NEVER LACK SYMPATHY WITH THE POOR. ALWAYS REMAIN DEVOTED TO THE PUBLIC WELFARE. NEVER BE SATISFIED WITH MERELY PRINTING NEWS. ALWAYS BE DRASTICALLY INDEPENDENT. NEVER BE AFRAID TO ATTACK WRONG, WHETHER BY PREDATORY PLUTOCRACY OR PREDATORY POVERTY.

THE POST-DISPATCH PLATFORM

JOSEPH PULITZER, APRIL 10, 1907

★ Why file criminal charges against a lone video retailer, Mr Spencer argued, when some of the biggest corporations in America, including a hotel chain whose board of directors includes W. Mitt Romney, president of the Salt Lake City Olympics organizing committee, and a satellite broadcaster heavily backed by Rupert Murdoch, chairman of the News Corporation, were selling the same product?

It took only a few minutes for the jury to find Mr. Peterman not guilty on all charges. His case illustrates what has happened to an industry that used to be confined to the margins of commerce, in the seedy parts of most towns, run by people who never dreamed of taking their companies to Wall Street.

Deseret News
Larry W. Peterman, **right** with his
lawyer, **Randy Spencer**, at **Mr.**
Peterman's **mal** Mr. Peterman, a
video-store owner, was **acquitted** of
obscenity charges.

Whatever the phenomenon may say about the nature of American society, the financial rewards are **so** great that **some** of the biggest

most recognizable corporate names

★★★★★★★★★★★★★★★★

For hotels, the sex that can be piped through television generates far more money than the beer, wine and snacks sold from the rooms' bars. Just under 1.5 million hotel rooms, or about 40 percent of all hotel rooms in the nation, are equipped with television boxes that sell the kind of films that used to be seen mostly in adults-only theaters, according to the two leading companies in the business. Based on estimates provided by the hotel industry, at least half of all guests buy these adult movies, which means that pay-per-view sex from television

hotel rooms may generate about \$190 million a year in sales

At home, Americans buy or rent more than \$4 billion a year worth of graphic sex videos from retail outlets and spend an additional \$800 million on less explicit sexual films — all told, about 32 percent of the business for general-interest video retailers that carry adult topics, according to compilations done by two trade organizations that track video rentals. Chains like Tower Records now stock nearly 500 titles in their so-called erotic category, far more than films about history or dinosaurs.

On the Internet, sex is one of the few things that prompts large numbers of people to disclose their credit card numbers. According to two Web ratings services, about one in four regular Internet users, or 21 million Americans, visits one of the more than 60,000 sex sites on the Web at least once a month — more people than go to sports or government sites.

Though estimates have been greatly inflated by some e-commerce sex merchants, analysts from Forrester Research say that sex sites on the Web generate at least \$1 billion a year in revenue, providing a windfall for credit card companies, Internet search engines and people who build Web sites, among others in the commercial food chain.

Some of the most popular Web properties — which feature quick links to sites labeled "Virgin Sluts" and "See Teens Have Sex" — are owned by a publicly held company in Boulder, Colo. That company, New Frontier Media, has stock traded like any other, and it expects its video network to be in 25 million homes within a few years. It does business with several major companies, including EchoStar and In Demand, the nation's leading pay-per-view distributor, which is owned in part by AT&T, Time Warner, Advance-Newhouse, Cox Communications and Comcast.

Another company, LodgeNet, whose chairman is Scott C. Petersen, does \$180 million in annual business selling sex videos and other forms of room entertainment to hotels. LodgeNet is a major employer in Sioux Falls, S.D., its home base. It is a client of the accounting giant Arthur Andersen, and nearly a fifth of the company's public shares are held by a Park Avenue investment firm, Red Coat Capital Management of New York.

"We feel good about what we do," said Ann Parker, a spokeswoman for LodgeNet, which trades on the Nasdaq market. "We're good corporate citizens. We contribute to local charities."

The biggest provider of hard-core sex videos and adult Web content, Vivid Entertainment Group of Van Nuys, Calif., whose founders and principal owners are Steven Hirsch and David James, has been making

stock offering next year that could ultimately lead to the **first porn billionaire**.

"The adult entertainment business is just **exploding**," said Bill Asher, the president of Vivid, whose offices are in a new granite and glass building that houses investment and venture capital firms. "Right now there are a lot of people making a **lot of money**. Somebody's got to take control of it, and we figure it might as well be us. We see ourselves as the designated driver of this business."

To the astonishment of Mr. Flynt, who began in the pornography business by selling poor-quality pictures of naked girls as a way to build interest in his strip clubs, his competitors in the \$10 billion annual adult market are mainstream corporations whose board members are among the American business elite.

"We're in the **small** leagues compared to some of those companies like General Motors or AT&T," Mr. Flynt said. "But it doesn't surprise me that they got into it. I've always said that other than the desire for survival, the strongest desire we have is **sex**."

The Technology Factor

★ ★ ★ ★ ★ ★ ★

Look, Ma,

No Staples!

Thirty years ago, a federal study put the total retail value of hard-core pornography in the United States between \$5 million and \$10 million — or about the same amount that a single successful sex-related Web site brings in today. It seemed likely that the industry would remain where it had always been — largely out of sight, but profitable, and faced with consistent legal problems.

What kept the market relatively small, in the view of people in the industry, were the barriers between consumer and product. Typically, a person would have to go to a run-down part of town, among people considered less than savory, to find hard-core adult films or bookstores. These retail outlets frequently were raided by law enforcement authorities, further adding to the risk for a consumer — a risk of shame or arrest.

In 1975, the Sony Corporation released the videocassette recorder to the broad market, and within 10 years, about 75 percent of all American households owned a VCR. Once the venue had moved from theater to the privacy of the home, the adult entertainment industry was never the same. For example, a single film, "Deep Throat," generated more than \$100 million in sales, thanks in large part to the popularity of VCR's, Frederick S. Lane III writes in his book

Josephine F. F. "The Disruptors of Pornography in the Cyber Age" (Routledge, 2000).

But even with most Americans owning VCRs, people still had to take a trip to the video store, risking some embarrassment. Pay-per-view television and the Internet removed the final barriers.

Cable and satellite programmers allow people to buy a variety of **sex-based programming**, from **Playboy**, on the lighter side, to the Hot Network, owned by Vivid, and the Erotic Television Network, distributed by New Frontier, on the **more** explicit end of the spectrum. Consumers could watch movies of people having sex without ever leaving home.

What investors and bigger corporations soon discovered was the vast audience for pornography — once the privacy barrier **was** eliminated. Twenty percent of all American households with a VCR or cable access will pay to watch an explicit adult video — and 10 percent will pay frequently, according to the distributors New Frontier and Vivid. That interest explains, in part, why the production of pornographic **films** has grown tenfold in the last decade. **There are** now nearly 10,000 adult movies made every year, according to an annual survey of the films produced in the Los Angeles area.

Last year, there were 711 million rentals of hard-core **sex** films, according to Adult Video News, **an** industry magazine that is to pornographic films what the trade publication Billboard is to records. It even has its own film awards — modeled after the Oscars.

But video rentals have reached a plateau over the last two years. The future is pay-per-view at home — driven by the easy access and good technical quality of digital television — and pay-per-view from the Internet, driven by the technological innovations of new cable and phone lines that carry **far** more images, more quickly, to a computer screen.

"Videos changed the way people could view porn because they were able to watch in the privacy of their homes," said **Barry Parr**, an electronic commerce analyst with International Data Corporation. "Internet pornography takes that a step further — they can do it with **absolute** privacy."

The number of people visiting sex sites on the Web doubled over the last year, outpacing the number of new Internet users. Some of the more popular **sex** Web sites attract in excess of 50 million hits, or visits, a month, according to the ratings services Nielsen/Net and Media Metrix. About one in a thousand people who visit a site will subscribe, for fees averaging \$20 a month, according to some of the leading Web pornography providers and Flying Crocodile Inc., a company based in Seattle that tracks and services the sexual-content


market

At the same time that technology was making it easier for people to view pornography, legal obstacles were falling. The 1973 Supreme Court case *Miller v. California* established a threshold for defining illegal pornography; a major test ~~was~~ that it had to be considered obscene to the "average person, applying ~~contemporary~~ community standards."


Initially, the case helped prosecutors ~~clamp~~ down on publications and movies. But that proved to be short-lived. If "Deep Throat" could sell \$100 million worth of copies, then what was the community standard?

"The court may have handed off the determination of obscenity to the local community, but the standards of local communities had fundamentally changed," writes Mr. Lane in "Obscene Profits."

When Mr. Peterman was prosecuted for distributing obscene material in ~~Utah~~ last year, he became one of the few video retailers in the nation charged with such a crime in recent years. In a state long regarded as a bastion of family-values morality, more than 4,000 people signed petitions supporting his prosecution.



But Mr. Peterman showed that he had 4,000 regular customers for sex videos. ~~His~~ lawyer argued that Mr. Peterman was not violating community standards, because people in Utah County bought 20,000 adult sex videos from one satellite programmer ~~alone~~ in the period that Mr. Peterman was said to have broken the law; it was double the volume in most cities the size of Provo. And in the Provo Marriott, guests were paying for nearly 3,000 explicit adult videos every year, according to court testimony. ~~After the Peterman trial, that hotel dropped its adult movies.~~




"My client was just a little guy," Mr. Spencer said, "a mom-and-pop dealer in a very big business."

The Corporate Factor
 ★ ★ ★ ★ ★ ★
 It's the Demand,

Companies Say

At a time when political campaigns from the presidential level down to that of the local school board have made an issue of sexual excess in broadcasting, the corporate entanglements in the pornography business have blurred the lines of the debate.



In Missouri this year, Senator John Ashcroft, a Republican, ran ads denouncing "Hollywood's decaying influence" on society, singling out

donations from Christie Hefner, the Playboy executive.

Mr. Carnahan, who died last week in a plane crash, had countered by pointing to donations to Mr. Ashcroft from Charles W. Ergen, chief executive of Echostar, which sells adult pay-per-view through its fast-growing DishNetwork satellite division.

"If he's going to start that, he's in greater trouble than I am," Mr. Carnahan had said.

Mr. Ashcroft's supporters had replied that there was still a distinction between the two companies. EchoStar did not produce pornography — it merely sold it, while Playboy created its own videos and pictures, they said.

"We added adult at the request of our customers," said Judiann Atencio, a spokeswoman for Echostar. "We have something for everybody, from Irish hurling to cricket. Adult is there if you want it."

When AT&T announced that it would start offering the hard-core Hot Network to its 2.2 million digital cable subscribers beginning in August, they were castigated by critics and pressured by religious and civic groups that hold stock in the company.

A group of mutual-fund investors, which included the Sisters of Charity of New York, the Evangelical Lutheran Church of America and the Mennonite Church, told AT&T its members did not want their three million shares invested in a company that sold pornography.

"At the heart of our concern is the concept of mainstream companies getting into hard-core pornography," said Mark Regier, who manages a mutual fund for 800,000 members of the Mennonite faith. "For a company with AT&T's tradition and its charitable work to be involved with pornography at this level is unbelievable. And I don't think many people understand what it means to take away the buffers to this kind of material, such as AT&T is doing."

For AT&T, there are sound business reasons to start carrying the highly profitable Hot Network. Unlike distributors of mainstream Hollywood pictures, sex-film distributors typically offer the programmers a split of 50 percent of the revenue, compared with 50 percent or less for routine features.

Impulse buys, in which customers tap a code into a remote and a movie follows, have also spurred in-home sales of pornographic films.

"Impulse technology — that's been just incredible," said Mr. Asher of Vivid Entertainment, which makes hundreds of adult films and claims that it sells a million copies a month to Cable, satellite, home video and

hotel retailers. "You have about 50 million homes with this kind of technology now," Mr. Asher said, "and it's growing enormously. It's easy and it's private — that's the key."

Although the companies that program **explicit sex films** will not give out their revenue figures for this **category**, a report by the Showtime Event Television company found that **adult pay-per-view took in \$367 million** last year — a more than sixfold **increase** from the \$54 million of 1993, easily outpacing the growth of pay-per-view "events" like boxing and wrestling.

Time Warner, EchoStar, General Motors and AT&T all say they are simply responding to a growing American market that wants pornography in the home. At the same time, the companies say new technology makes it possible for parents to keep such programming away from children.

"We call it choice and control," said Tracy Hollingsworth, a spokeswoman for AT&T Broadband, the company's cable division. "Basically, you use your remote to block out any programming you don't want. But if you want it, we offer a wide range of programming that is available in the market we're in."

Hotel chains have made similar decisions when, this year, several groups urged them to get rid of the adult pay-per-view programs that are in nearly 60 percent of all middle- to high-end hotels. Only one chain, the relatively small Omni Hotels, chose to remove the sex **films**.

"What we noticed was that early on, the content was R-rated, but then it migrated rather quickly to redly raunchy stuff — just hard-core porn," said Jim Caldwell, the president of Omni. "I thought: What are we doing? We don't have topless waitresses in the restaurant."

Mr. Caldwell said more than 50 percent of all guests were buying the **sex** films. "The anonymity is the big thing," he said.

Omni's decision to remove **pay-per-view** sex videos from the company's 15,000 rooms will **cost the** company more than **\$1.8 million** a year, Mr. Caldwell said. **But he said he** had received phone **calls and** letters of thanks from 50,000 people — more than for any other corporate decision.

Much larger hotel chains, like Marriott, which calls itself the world's largest hotel management firm, with nearly 300,000 rooms in the United States, and Hilton, with 290,000 rooms under its control, have not made changes.

Some critics said Marriott, run by several prominent members of the Mormon Church, though not affiliated in any way with the church itself, should drop its adult movies, given the stand against explicit

sexual materials that Mormons have long taken. But company officials said they were mostly franchisers, and could not make unilateral decisions for the hotel owners who paid to be a part of the Marriott chain.

The two companies that provide hotels with pornographic films are both traded on Wall Street and have enjoyed big run-ups in their stock prices over the last few years. The leader, On Command, based in Denver, is worth more than \$400 million, and its principal owner is Liberty Media, controlled by John C. Malone, the cable and telecommunications magnate who sits on the board of AT&T and recently agreed to buy up to 15 percent of the shares of Mr. Murdoch's News Corporation.

The chairman and chief executive of On Command is Jerome H. Kern, a former New York corporate lawyer active in civic and volunteer causes, serving on the board of New York University and as a director of Volunteers of America in Colorado.

On Command would not discuss how much money it is making on adult films. But in its annual report, the company said it was generating \$23 a room each month for the 835,000 hotel rooms it reaches. The company goal is to get into an additional one million hotel rooms. Analysts say at least half the revenue comes from adult films. The company recently began offering all-day erotic television to hotel customers, for a single price of \$15.99.

"Talk about your captive audience," said Mr. Asher of Vivid. "I've heard that in some hotels, 85 to 90 percent of all profits from in-room spending comes from adult channels."

The Money Factor

★★★★★

Big Profits Now,

Bigger Ones on Way

While the big companies that deliver sex films to homes and hotels will not talk about how popular explicit sexual materials are, the makers and distributors say the volume is enormous. And court testimony and documents that were made public in the Peterman case also offered some insight into the profit potential.

"Despite the fact that this material isn't marketed, revenue-wise, it's one of our biggest moneymakers," said Peggy Simons of TCI Cable, in court testimony in Mr. Peterman's case. TCI, controlled by Mr. Malone, has since been bought by AT&T.

"When we talk to the companies one-on-one, they tell us we're great,

In trying to take public his company, which now does about \$80 million a year in sales, Mr. Asher said, "The biggest problem I have is the image of the adult business. People think it's run by the mob, by a bunch of guys with gold chains. I grew up in Paris, Illinois. I have a master's of business administration degree."

The Hot Network portrays people having sex in a variety of methods — what the company calls "widely accepted sexual activity" — and prohibits scenes of violence, nonconsensual sex, drug use, forced bondage and sex with minors.

Analysts of electronic commerce and telecommunications say the mainstream sex market might be leveling off, but new technology is likely to bring in even more consumers.

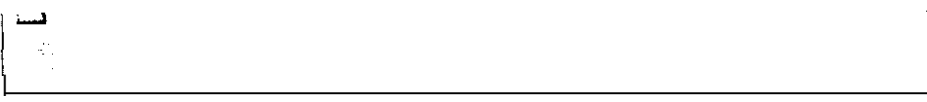
"The novelty of it has not worn off yet, and I don't believe it will wear off," said Sean Calder, a vice president for e-commerce at Nielsen/Net Ratings, which gauges the popularity of Web sites. "The numbers point to a huge personal need. We see lots of people logging on at 3 in the morning."

The \$30 billion project to rewire the cable industry with lines capable of bringing more material, and allowing people to buy on impulse, will play a big part in the emerging home pornography market.

"These companies like AT&T, they're thinking ahead to a time, perhaps in 10 years, when 50 million Americans will have broadband capability and all their television and Internet will be interactive through one big box," said Bryn Pryor, technology editor for Adult Video News, the trade magazine.

"But it's not just technology that made the big boys get into it," Mr. Pryor said. "This just happens to be a business where you can't lose money."

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